

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
 FOR THE COUNTY OF YAVAPAI

2012 FEB 15 AM 8:55 ✓
 SANDRA K. HANCOCK, CLERK
 BY: C. Flick

STATE OF ARIZONA,)
)
 Plaintiff,)
)
 vs.) Case No. V1300CR201080049
)
 JAMES ARTHUR RAY,) Court of Appeals
) Case No. 1 CA-CR 11-0895
 Defendant.)
)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
 BEFORE THE HONORABLE WARREN R. DARROW
 STATUS CONFERENCE
 JULY 8, 2010
 Camp Verde, Arizona

ORIGINAL

REPORTED BY
 MINA G. HUNT
 AZ CR NO. 50619
 CA CSR NO. 8335

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
2 FOR THE COUNTY OF YAVAPAI
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4 STATE OF ARIZONA,)
5 Plaintiff,)
6 vs) Case No V1300CR201080049
7 JAMES ARTHUR RAY,) Court of Appeals
8 Defendant) Case No 1 CA-CR 11-0895
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25 MINA G HUNT
AZ CR NO 50619
CA CSR NO 8335

Mina G. Hunt (928) 554-8522

1 Proceedings had before the Honorable
2 WARREN R. DARROW, Judge, taken on Thursday, July 8,
3 2010, at Yavapai County Superior Court,
4 Division Pro Tem B, 2840 North Commonwealth Drive,
5 Camp Verde, Arizona, before Mina G. Hunt, Certified
6 Reporter within and for the State of Arizona.
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1 APPEARANCES OF COUNSEL:

2 For the Plaintiff:

3 YAVAPAI COUNTY ATTORNEY'S OFFICE
4 BY: SHEILA SULLIVAN POLK, ATTORNEY
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6 Prescott, Arizona 86301-3868

7 For the Defendant:

8 THOMAS K KELLY, PC
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425 East Gurley
9 Prescott, Arizona 86301-0001
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13 (Appearing by telephone.)
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1 PROCEEDINGS

2 THE COURT: This is State versus James Arthur
3 Ray, CR201080049. And in my office are Ms. Polk,
4 representing the state, Mr. Kelly. And then on the
5 phone we have Truc Do, Luis Li and Steven Sisneros
6 also.

7 MS. MORETON: Your Honor, this is Pam Moreton.
8 I had my phone muted when I responded to you.

9 THE COURT: Pam Moreton is also on the line.
10 Thank you everyone for getting together. I don't
11 have my regular system. It's broken. So we're
12 just on an old-time conference call here,
13 speakerphone. But I hope everybody can hear.

14 What I want to do is just tell you my
15 situation as best I can. And I went through this
16 in the previous case that I've called this
17 afternoon. I can't say a whole lot because I have
18 to make a Rule 19.5 determination in that other
19 matter. It's a homicide case that I've been
20 assigned to substitute in on. But I have to make
21 certain determinations, and I'm in the process now
22 of reviewing a great deal of information.

23 But I still think it's only fair to
24 parties involved in other cases to let them know
25 that there is a very good chance that I might not

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1 be available really to work on anything other than
2 routine calendar matters. I am going to maintain
3 my Monday calendar. So I'll be doing that.

4 But what's anticipated now is the
5 possibility of four-day trial weeks in that other
6 matter. Again, it's not 100 percent. I'm not
7 going to go into any detail without the defense
8 attorneys being represented here. But I want to
9 let everybody know that.

10 So I need people to think about what you
11 want to do. And I'm not asking for any decision
12 right now. But obviously to preserve the August 31
13 trial date that we have -- and that was Rule 8
14 time. There was a waiver of Rule 8 time to get to
15 that date. I need to get the case to
16 Judge Brutinel for reassignment right away. The
17 motions are now starting to come in. I know there
18 is one for change of place of trial. And other
19 motions have come in discover. I have not had a
20 chance to do anything other than look at the
21 captions pretty much. That's it.

22 So I just want to apprise people of that.
23 If you have any initial thoughts, we can talk about
24 that. But I would want to know by Monday where you
25 stand with that. As I said, I'm not going to be

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1 available until, in all likelihood, probably until
2 November.

3 Ms. Polk, do you have any --

4 I want everybody to have a chance to
5 think about it. But do you have some initial
6 thoughts?

7 MS. POLK: Judge, is it a possibility that you
8 would hold on to this case and try it at the
9 conclusion of the other case? Is that a
10 possibility, in your mind?

11 THE COURT: Yes. If that other trial -- this
12 is public record. It was covered by the media in
13 the other case. The jury now has, essentially,
14 been requalified through October is what's
15 happened. And the lawyers really think it's going
16 to go that long.

17 I wouldn't be looking at motions in this
18 case and wouldn't have time to hear them or
19 anything until after that in itself. So you're
20 looking at November before even hearing motions.
21 And then I'd be really hesitant if this happens.
22 And again --

23 Mr. Kelly, I haven't heard from you yet.
24 Of course, I'm going to do that. Or Mr. Li or
25 Ms. Do.

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1 But to start picking a jury right in the
2 holiday, tremendous difficulties there. I think
3 there are some considerations in how to go about
4 selecting a jury in this case. And that's
5 something I wanted to talk to the lawyers about.
6 We had some talk about having a questionnaire. I
7 think some at least limited form of questionnaire
8 might make sense.

9 Then again there is the whole issue of
10 changing venue or changing place of trial.

11 To answer Ms. Polk's question, yes. I
12 would keep the case, essentially. But I can't with
13 the current time limits is what apparently I have
14 to do right now.

15 Mr. Kelly.

16 MR. KELLY: Judge, I've had a chance to
17 consult with Mr. Li and Ms. Do. I believe our
18 preference -- in fact, I know our preference is to
19 leave the case in front of you. You understand the
20 pretrial history of the litigation.

21 And Mr. Li can respond to this. I've not
22 had a chance to speak with Mr. Ray in regards to
23 further waiver of his Rule 8 time limits. I simply
24 didn't consider that. So I don't know. Mr. Li has
25 frequent contact with Mr. Ray. Maybe he can

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1 address that.

2 MR. LI: I haven't had a chance to talk to
3 Mr. Ray about it yet and will do so. I'm meeting
4 with him tomorrow in the morning. So I will
5 certainly put that on the front of the agenda.

6 THE COURT: Okay.

7 I would like to know by Monday from
8 everybody if at all possible.

9 MR. LI: Understood.

10 THE COURT: Okay.

11 MR. KELLY: I guess I'm making an
12 assumption -- we're just talking out loud -- that
13 it would be the state's preference to leave the
14 case in this division and to start after
15 Christmas --

16 MS. POLK: Do you represent the state?

17 MR. KELLY: No. It was a question.

18 MS. POLK: Oh. I thought you were stating --

19 MR. KELLY: I thought that that's what you had
20 said. And I think it would be valuable to Mr. Li
21 and I to know that when we speak with Mr. Ray. So
22 are you yet undecided?

23 MS. POLK: No, Judge. I'm comfortable leaving
24 the case in this division and working with a trial
25 schedule that would begin after the holidays. And

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1 I agree with you that there are significant jury --
 2 there is a process for the jury selection that's
 3 going to be, I think, elongated due to the
 4 publicity that the case has gotten. And I think
 5 there are issues over just trying to pick jurors
 6 over the holidays.

7 I also have personal vacation plans over
 8 the holidays that were planned around an August 31
 9 trial date that I would hope the Court would
 10 respect.

11 But I am comfortable and it is the
 12 state's preference that the case remain with this
 13 division.

14 THE COURT: Okay.

15 MR. KELLY: And I appreciate that information.
 16 I'm sure Mr. Li does as well.

17 MR. LI: I do. Thank you.

18 THE COURT: I still would like to get to the
 19 motion practice before the first of the next year.
 20 As a matter of fact, I'd like to be looking at the
 21 motion for change of place of trial much sooner.
 22 Even when I get, oh, further along in the other
 23 case, that's something I would consider as well.

24 MR. LI: Your Honor, this is Luis Li here. It
 25 occurs to me that there are two buckets of motions

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1 that are either in front of the Court or will be in
 2 front of the Court shortly. One is what I would
 3 call case management type motions related to change
 4 of venue, certain discovery issues that we have.

5 And another bucket of motions has to do
 6 with evidentiary issues that can be delayed until
 7 pretrial, right before trial.

8 But with respect to the case management
 9 issues, if there is some way the Court would be
 10 willing to put those on its regular Monday
 11 calendar, we'd appreciate it. Because some of
 12 those issues, particularly the discovery issue,
 13 will -- you know -- are outstanding. And we need
 14 some guidance from the Court as to how best to
 15 proceed.

16 THE COURT: And I would say that's something
 17 that I would say perhaps in August, more along that
 18 time frame, looking at some of those initially.
 19 August or maybe early September.

20 Would that work, do you think, from your
 21 view, Mr. Li?

22 MR. LI: Yes, Your Honor, if that's the --
 23 obviously, Your Honor, we'd prefer it as soon as
 24 possible. But we understand the situation and --
 25 you know -- defer to the Court's calendar.

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1 THE COURT: Especially with the discovery
 2 issues, the disclosure issues, those have to be
 3 dealt with. Really I would just have to find time
 4 if I'm remaining on the case to get that heard in
 5 August, the earlier in August the better.

6 MR. LI: It's only one discovery motion. I
 7 don't imagine it's going to take -- it's not -- I
 8 don't imagine it's going to be a big evidentiary
 9 hearing or anything like that.

10 THE COURT: My bailiff has just handed me -- I
 11 have one -- I have a full afternoon I know that
 12 will be open on August 10, which I know that's
 13 further out than we wanted to do things.

14 MR. LI: I'll take it, Your Honor.

15 THE COURT: Just keep that in mind. Again,
 16 all this is still somewhat tentative. But we need
 17 to plan now. People need to think about this.

18 I agree we'll address discovery sooner no
 19 matter where the trial may take place. That has to
 20 be established. Okay.

21 MS. DO: Your Honor, does the Court intend to
 22 vacate the dates of the 20th and 21st?

23 THE COURT: Yeah. Yes. In any event, those
 24 would not be available. And I'm just going to
 25 order that now.

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1 MS. POLK: Judge, I'd like to address the
 2 Court's imposed deadlines for the filing of
 3 motions, which is tomorrow, July 9. In light of
 4 this new trial schedule and in light of the fact
 5 that I feel there is ongoing discovery, I would
 6 request that that motion deadline be vacated and a
 7 new motion deadline be set giving parties time to
 8 complete discovery.

9 THE COURT: Does anyone want to address that?

10 MR. KELLY: I'm going to defer to Mr. Li.

11 MR. LI: I defer to the Court's calendar.

12 MR. KELLY: I don't see a problem with that,
 13 Judge.

14 THE COURT: We put the deadline there to
 15 accommodate the late August trial date. It's going
 16 to be much later than that. So I'll vacate the
 17 current deadlines.

18 And what would you suggest?

19 MR. KELLY: Perhaps, Judge, we could confer
 20 and suggest a date with the State of Arizona.

21 THE COURT: I'd prefer that. If you come up
 22 with a disclosure and discovery schedule. And then
 23 I can incorporate that in a minute entry order. I
 24 would prefer that.

25 At this time, since Heidi has handed me

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1 this, why don't we set a status and motion hearing.
 2 This is all tentative obviously for various
 3 reasons. But August 10 at 1:30. And we'll leave
 4 that. We'll have that as a place to touch bases.
 5 And we'd have probably by that time a proposed
 6 disclosure schedule. We can put that in an order
 7 at that point.

8 So with regard to the trial date --

9 MS. DO: Your Honor also had a number of other
 10 dates. For example, I believe the -- July 23rd was
 11 a date that the parties were supposed to exchange
 12 witness and exhibits lists.

13 THE COURT: Ms. Do, I meant that to be
 14 inclusive. Pretrial scheduling deadlines are just
 15 vacated at this point.

16 MS. DO: Thank you.

17 THE COURT: You're welcome. We'll just adjust
 18 that if and when a new trial date is determined.

19 MR. LI: Your Honor, with respect to a later
 20 trial date, I think perhaps maybe one way to
 21 proceed would be for us to have our conversation
 22 with Mr. Ray tomorrow and understand what his
 23 position is relating to the waiver of time and then
 24 let the Court know as soon as we have a position,
 25 which, I think, Your Honor, should probably be

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1 tomorrow. And then maybe we can set another
 2 conference to set a trial date.

3 THE COURT: We actually did get a bit ahead of
 4 ourselves. I mention this is tentative, and we
 5 talked about deadlines. I'm assuming the trial is
 6 going to be moved. And I haven't moved the trial
 7 itself. The vacating of deadlines -- of course,
 8 that goes with the new trial. If for some reason
 9 there is not a waiver, then I've got to get a -- we
 10 have to get a new judge in here right away to hear
 11 motions.

12 So right now I'm leaving the August 31
 13 date on and the deadlines on. But if I get word
 14 Monday that -- you know -- I can take it from
 15 either side. If someone calls with the avowal that
 16 the other side agrees that the matter is going to
 17 be vacated, I'll just act on that. I can trust the
 18 avowal of counsel for that.

19 MR. LI: In terms of the motions deadline,
 20 since obviously we're not -- we haven't talked to
 21 Mr. Ray yet. Out of courtesy to the state, I think
 22 we're willing to vacate the motion date for the
 23 time being. And if there is some problem -- or
 24 we're to agree that the Court could vacate the
 25 motion deadline. And if there is a problem, then

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1 we could have a status conference and reset a
 2 motion date.

3 THE COURT: Okay. We'll do that. Right now
 4 the motion deadlines are waived temporarily anyway.

5 Okay.

6 MS. POLK: Judge, I do have one more matter.
 7 The state had filed yesterday an emergency motion
 8 to seal certain exhibits --

9 THE COURT: Yes.

10 MS. POLK: -- that the defense attorneys had
 11 attached to a recent pleading or a declaration. I
 12 did receive from Mr. Kelly today a response
 13 indicating that they have no objection to sealing
 14 the documents with the exception -- I think they
 15 indicated the first and last page. We're talking
 16 about the autopsy reports that the Court had
 17 previously ordered sealed.

18 Ms. Do filed a declaration attaching the
 19 entirety of the three autopsy reports. They've
 20 indicated that they don't agree with the state's
 21 emergency request to have them sealed, but they
 22 want part of them unsealed, I assume consistent
 23 with the Court's order of redaction.

24 THE COURT: Heidi, would you get those.
 25 They're right behind Diane's desk there.

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1 What I had just signed, there was an
 2 agreement for some sealing that the records came
 3 in -- requests to seal.

4 And then, Ms. Polk, you signed something
 5 where you agreed that certain exhibits should be
 6 sealed; right? If I don't bring that in -- excuse
 7 me.

8 This is what we're talking about?

9 MS. POLK: Correct.

10 THE COURT: It seemed to be what -- I went
 11 ahead and sealed 66, 67 and 68 because both sides
 12 wanted it sealed. So I just went ahead and did
 13 that. This other still remains pending.

14 MS. POLK: I'm not sure what the other --

15 THE COURT: Right now I'm just keeping it all
 16 under wraps, if you will, until it gets sorted out.
 17 That's what I'm doing.

18 MS. POLK: And I appreciate that, Judge,
 19 because both the public access system and then the
 20 clerk has put this case on another database that's
 21 out there for the public.

22 THE COURT: Yeah. And I'm not letting this be
 23 scanned or anything at this point. I'm just
 24 keeping it hard copy until somebody gets a chance
 25 to look at it.

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1 Is there any further stipulation or
2 anything? I thought we started to talk about that.

3 MR. KELLY: Do you have a pleading?

4 MS. DO: Are we still talking about the
5 exhibits, Your Honor?

6 THE COURT: Yes.

7 MS. DO: We filed I believe -- I'm sorry,
8 Your Honor. I think we filed today a response and,
9 essentially, agreed to withdraw all pages of
10 Exhibit 66, 67 and 68 except for the first page and
11 the last page, which the Court did not seal
12 pursuant to the March 16 court order.

13 And we apologize. We had inadvertently
14 submitted the entirety of the autopsy reports. I
15 believe that that's the agreement.

16 THE COURT: Okay. So all we're talking about
17 is those three. What about the rest?

18 MS. POLK: Judge, I haven't had a chance --

19 THE COURT: Go ahead, Ms. Do.

20 MS. DO: I don't believe there is an issue
21 with the rest, Your Honor. The state's emergency
22 motion to seal was only with respect to Exhibit 66,
23 67 and 68. And based upon our agreement, I think
24 the Court can simply -- we're withdrawing those
25 exhibits except for the first and last page.

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1 THE COURT: And there are so many exhibits.
2 The first last page of?

3 MS. DO: 66, 67 --

4 THE COURT: Got you. Okay.

5 MS. DO: The rest of the motions and the
6 exhibits -- I don't believe there are any issues
7 with regard to that.

8 MS. POLK: Judge, two things. With respect to
9 the autopsy report of Liz Neuman, the last page, a
10 portion of it was ordered redacted by the Court.
11 So Ms. Do is indicating that the first and last
12 page of the exhibits should not be sealed.

13 MS. DO: I'm sorry, Ms. Polk. I should be
14 more specific. We had indicated in our response
15 the first page and the last page only with respect
16 to the final and summary opinions.

17 MS. POLK: My preference would be the entire
18 autopsy reports be sealed. And with respect to the
19 remaining exhibits that are attached to the
20 declarations, I would appreciate the opportunity to
21 go through them.

22 I anticipate filing an objection with the
23 Court of this practice of submitting evidence via
24 declaration instead of an evidentiary hearing. And
25 I anticipate filing that motion. So I appreciate

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1 the Court keeping -- allowing none of it to be
2 scanned for the meantime onto the public access
3 system.

4 THE COURT: And I know I've had people call in
5 and people show up. I appreciate that. But I
6 really didn't want to get into arguing any
7 substantive matters right now. I'd prefer if you
8 can work things out, would you get me something in
9 a stipulation.

10 Ms. Polk indicates she wants to look
11 through all of the documents and then have a
12 procedural objection apparently. And that can be
13 addressed also.

14 But let's figure out, though -- we have,
15 technically, a trial setting. We have the trial,
16 the motion deadlines and related deadlines waived
17 temporarily. I'd like to have a date certain to --

18 And, Mr. Li, I know you have to be with
19 Mr. Ray. But we really should set up something
20 telephonically at least to see where we are and get
21 it really clear what -- as clear as we can make
22 future scheduling.

23 MR. KELLY: Let me ask you, Judge. When do
24 you anticipate a final decision under Rule 19 that
25 you would take over the DeMocker case?

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1 THE COURT: What I said on the record there is
2 I've got -- I'm going to meet with -- kind of a
3 hearing conference with everybody in that case
4 tomorrow in the morning in Prescott. That's going
5 to be discussed.

6 Right now I have the jury coming back on
7 Wednesday, the 14th. And -- you know -- I think
8 the decision is going to be made by that time. I
9 haven't said even that much in the other case. I
10 want to -- it's just tentative.

11 MR. KELLY: I guess my question, then, would
12 be would the beginning of next week be too early
13 given the decision you have to make?

14 THE COURT: No. As a matter of fact --

15 MR. KELLY: Well, it would have to be --

16 THE COURT: Tuesday --

17 What's going on.

18 MS. TROXELL: We have availability Tuesday.
19 We just have one settlement conference set at 9:00.

20 THE COURT: There are two separate questions
21 there. One is being able to certify you can
22 proceed and it's the appropriate thing to do. You
23 have to consider prejudice. The other thing is
24 when that actually -- when the preparation is
25 complete.

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1 Let's have something on Tuesday, a
 2 telephonic call in the afternoon at 1:30. And what
 3 I'll do --

4 Do I have anything else over here on
 5 Tuesday?

6 MS. TROXELL: Settlement conference in the
 7 morning.

8 THE COURT: Okay. Tuesday at 1:30. I may not
 9 be speaking up. I'm sorry. I realize we're on the
 10 speaker again. Tuesday at 1:30 for a status
 11 conference. And then we should be able to be
 12 definitive.

13 All right. Thank you.

14 MR. KELLY: Thank you.

15 MS. POLK: Thank you.

16 THE COURT: And I appreciate. We'll hang up
 17 now.

18 (The proceedings concluded.)
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1 STATE OF ARIZONA)
 2 COUNTY OF YAVAPAI) ss REPORTER'S CERTIFICATE

3
 4 I, Mina G. Hunt, do hereby certify that I
 5 am a Certified Reporter within the State of Arizona
 6 and Certified Shorthand Reporter in California

7 I further certify that these proceedings
 8 were taken in shorthand by me at the time and place
 9 herein set forth, and were thereafter reduced to
 10 typewritten form, and that the foregoing
 11 constitutes a true and correct transcript

12 I further certify that I am not related
 13 to, employed by, nor of counsel for any of the
 14 parties or attorneys herein, nor otherwise
 15 interested in the result of the within action

16 In witness whereof, I have affixed my
 17 signature this 13th day of February, 2012

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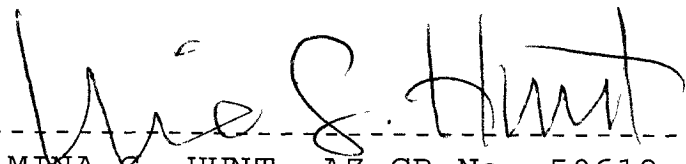
1 STATE OF ARIZONA)
2) ss: REPORTER'S CERTIFICATE
3 COUNTY OF YAVAPAI)

4 I, Mina G. Hunt, do hereby certify that I
5 am a Certified Reporter within the State of Arizona
6 and Certified Shorthand Reporter in California.

7 I further certify that these proceedings
8 were taken in shorthand by me at the time and place
9 herein set forth, and were thereafter reduced to
10 typewritten form, and that the foregoing
11 constitutes a true and correct transcript.

12 I further certify that I am not related
13 to, employed by, nor of counsel for any of the
14 parties or attorneys herein, nor otherwise
15 interested in the result of the within action.

16 In witness whereof, I have affixed my
17 signature this 13th day of February, 2012.

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